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United States Department of Labor

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 HILDA SOLIS, SECRETARY OF LABOR,)
14 UNITED STATES DEPARTMENT OF)
LABOR,)

CASE NO.: CV 11-06236 (CRB)(NJV)

15 Plaintiff,)

16 v.)

CONSENT JUDGMENT

17 HOLY CHILD RESIDENTIAL CARE)
HOME, INC., a corporation, NESTOR)
18 SANTOS, an individual, and ELIZABETH)
19 SANTOS an individual,)

20 Defendants.)
21)

22 1. Plaintiff, HILDA L. SOLIS, Secretary of Labor, United States Department of
23 Labor (the "Secretary") has filed a Complaint against Defendants Holy Child Residential Care
24 Home, Inc., Nestor Santos, and Elizabeth Santos (collectively "Defendants"), alleging violations
25 of the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938, as

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1 amended, 29 U.S.C. § 201 *et seq.*, (hereafter the “Act” or the “FLSA”).

2 2. Defendants have appeared and been advised by the Secretary of the right to retain
3 the assistance of counsel in the litigation of this matter.

4 3. Defendants waive the filing of an Answer and further waive entering any
5 affirmative defense, counterclaim, or third-party complaint, or any other defenses that they may
6 have in this case.

7 4. Defendants admit that the Court has jurisdiction over the parties and subject
8 matter of this civil action and that venue lies in the Northern District of California.

9 5. The parties agree to the entry of this Consent Judgment. The parties further agree
10 that this Consent Judgment shall fully settle all claims of the Secretary asserted in the Complaint
11 filed in this matter.

12 6. All parties expressly waive Findings of Fact and Conclusions of Law.

13 It is, therefore, upon motion of the attorneys for the Secretary and for cause shown:

14 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that pursuant to Section
15 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*, (hereafter the
16 “Act” or the “FLSA”), that Defendants, their officers, agents, servants, employees, and all
17 persons in active concert or participation with them be, and they hereby are, permanently
18 enjoined and restrained from violating the provisions of the Act, in any of the following
19 manners:

20 1. Defendants shall not, contrary to sections 6 and 15(a)(2) of the Act, pay any of
21 their employees who in any workweek are engaged in commerce or in the production of goods
22 for commerce or who are employed in an enterprise engaged in commerce or in the production of
23 goods for commerce, within the meaning of the Act, wages at a rate less than \$7.25 per hour (or
24 at a rate less than such other applicable minimum rate as may hereinafter be established by
25 amendment to the Act).

2. Defendants shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any

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1 of their employees who in any workweek are engaged in commerce or the production of goods
2 for commerce, or who are employed in an enterprise engaged in commerce or in the production
3 of goods for commerce, within the meaning of the Act, for workweeks longer than forty hours,
4 unless such employee receives compensation for his employment in excess of forty hours at a
5 rate not less than one and one-half times the regular rates at which he is employed.

6 3. Defendants shall not fail to make, keep and preserve records of their employees
7 and of the wages, hours, and other conditions and practices of employment maintained by them
8 as prescribed by the regulations issued, and from time to time amended, pursuant to section 11(c)
9 of the Act and found in 29 CFR Part 516.

10 4. Defendants shall not withhold payment of \$154,800.00 which represents the
11 unpaid minimum wage and overtime compensation hereby found to be due, for the period from
12 October 13, 2008, through October 10, 2010, to the present and former employees named in
13 Exhibit B, attached hereto and made a part hereof, in the amounts set forth therein.

14 5. Defendants shall not request, solicit, suggest, or coerce, directly, or indirectly,
15 any employee to return or to offer to return to the defendants or to someone else for the
16 defendants, any money in the form of cash, check, or any other form, for wages previously due
17 or to become due in the future to said employee under the provisions of this judgment or the Act;
18 nor shall defendants accept, or receive from any employee, either directly or indirectly, any
19 money in the form of cash, check, or any other form, for wages heretofore or hereafter paid to
20 said employee under the provisions of this judgment or the Act; nor shall defendants discharge or
21 in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against
22 any such employee because such employee has received or retained money due to him from the
23 defendants under the provisions of this judgment or the Act.

24 **FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to Section 16(c) of the
25 Act, in favor of the Secretary and against the defendants in the total amount of \$154,800.00.

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1 6. Defendants Holy Child Residential Care Home, Inc., Nestor Santos and Elizabeth
 2 Santos shall pay to the Secretary the sum of \$154,800.00, which represents the unpaid minimum
 3 wage and overtime compensation hereby found to be due, for the period from October 13, 2008,
 4 through October 10, 2010, to the present and former employees named in Exhibit B, attached
 5 hereto and made a part hereof, in the amounts set forth therein, less deductions for employees'
 6 pro rata share of social security and withholding taxes. This payment will be made in
 7 installments subject to interest at 1% per annum as set forth in paragraph 7 below.

8 7. The provisions of paragraphs 4 and 6 of this Consent Judgment will be deemed
 9 satisfied where Defendants comply with the following provisions:

10 a. Within ten (10) calendar days of the entry of this Consent Judgment,
 11 Defendants shall initiate repayment of the back wages described in paragraph 6 above by making
 12 an initial payment of \$3,500, less legal deductions for employees' share of social security and
 13 withholding taxes, in accordance with the terms set forth in subparagraph 7b below (and as set
 14 forth below in Exhibit A). Within forty (40) calendar days of the entry of this Consent
 15 Judgment, Defendants shall make an additional payment of \$4,240, less legal deductions for
 16 employees' share of social security and withholding taxes, in accordance with the terms set forth
 17 in subparagraph 7b below (and as set forth below in Exhibit A).

18 b. Defendants shall pay the remainder of the balance due, plus 1% annual interest,
 19 in 19 monthly installments—consisting of 18 payments of \$1,000.00 per month plus interest, and
 20 one final payment in the 19th month of the remaining balance plus interest, in accordance with
 21 the terms set forth in paragraph 7c (and as set forth in Exhibit A). Defendants may pay the
 22 remaining balance due in full at any time prior to the 19th month with no additional penalty or
 23 interest.

24 c. Defendants shall deliver to the Wage and Hour Division, United States
 25 Department of Labor, San Francisco District Office, 90 Seventh Street, Suite 13-100, San

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1 Francisco, CA 94103, within ten (10) calendar days of the entry of this Consent Judgment, and
 2 again on or before the fifth day of every month (i.e., July 5, August 5, September 5, etc.), in
 3 accordance with the terms set forth in paragraph 7b (and as set forth in Exhibit A), thereafter
 4 until the back wage provisions of this Judgment have been satisfied in full, the following:

5 (1) A check or money order with the firm name (that is contained in the
 6 caption of this Judgment) and "Back Wages and Interest" written on it, payable to the order of
 7 the "Wage & Hour Div., Labor," in the amount due at the time of the payment as set forth in
 8 Exhibit A below, less legal deductions for employees' pro rata share of social security and
 9 withholding taxes. The checks described in this subparagraph shall contain no expiration date
 10 and Defendants are responsible to ensure that the accounts from which the checks are issued
 11 have and retain at all times and until all such checks are cashed sufficient funds to cover the
 12 cashing of such checks.

13 (2) A schedule in duplicate bearing the firm name (that is contained in the
 14 caption of this Judgment), employer identification number(s), address, and phone number of the
 15 defendants and listing separately, for each person named in the attached Exhibit B, the name, last
 16 known (home) address, social security number, the gross amount of back wages included in the
 17 specific payment for the employee, and the net amount of back wages included in the specific
 18 payment for each employee.

19 d. In the event of any default in the timely making of any payment due under this
 20 Consent Judgment, the full gross amount (under the back wage provisions of this Judgment) that
 21 then remains unpaid (plus post-judgment interest, from the date of this Judgment until the full
 22 amount is paid in full, at the rate of 10 percent per annum on the full balance outstanding from
 23 time to time) shall become due and payable upon the Secretary sending by ordinary mail a
 24 written demand to the last business address of the defendants known to the Secretary; the manner
 25 of the immediate payment shall in the case of the back wages be a certified or cashier's check or

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1 money order with the firm name and civil action number from the caption on the first page of
 2 this Judgment and “net back wages” written thereon payable to the order of the “Wage & Hour
 3 Div., Labor,” and shall in the case of the interest on the back wages be a separate certified or
 4 cashier’s check or money order with the firm name and civil action number and “back wage
 5 interest” written thereon payable to the order of the “Wage & Hour Div., Labor.”

6 8. The Secretary shall allocate and distribute the remittances, or the proceeds
 7 thereof, less deductions for employees’ share of Social Security and withholding taxes, to the
 8 persons named in the attached Exhibit B, or to their estates if that be necessary, in her sole
 9 discretion, and any money not so paid within a period of three years from the date of its receipt,
 10 because of an inability to locate the proper persons or because of their refusal to accept it, shall
 11 be then deposited in the Treasury of the United States, as miscellaneous receipts, pursuant to 29
 12 U.S.C. § 216(c).

13 9. The filing, pursuit, and/or resolution of this proceeding with the filing of this
 14 Consent Judgment shall not act as or be asserted as a bar to any action under Section 16(b) of the
 15 FLSA, 29 U.S.C. § 216(b), as to any employee not named on the Exhibit B attached to the
 16 Consent Findings and incorporated hereto by reference, nor as to any employee named on the
 17 Exhibit B for any period not specified herein for the back wage recovery provisions.

18 10. Each party shall bear all fees and other expenses (including court costs) incurred
 19 by such party in connection with any stage of this proceeding to date.

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1 ORDERED that this Court shall retain jurisdiction of this action for purposes of
 2 enforcing compliance with the terms of this Consent Judgment.
 3

4 Dated this 7th day of May, 2012.
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 9 Defendants hereby consent to the entry of
 10 this judgment on this 7th day of May,
 11 2012.

12 Nestor Santos
 13 NESTOR SANTOS, Individually
 14 and on behalf of Holy Child Residential
 15 Care Homes, Inc.

16 Elizabeth Santos
 17 ELIZABETH SANTOS
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CHARLES R. BREYER
 U.S. DISTRICT

Dated: May

Judge Charles R. Breyer

M. PATRICIA SMITH
 Solicitor of Labor

M. KATHY ALEJANDRO
 Acting Regional Solicitor

DAVID M. KAHN
 Counsel for Employment Standards

/s/ Rose Darling
 ROSE DARLING
 Trial Attorney
 Attorneys for U.S. Department of Labor

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EXHIBIT A

Month	Payment Due Date	Gross BWs	PJ Interest (1% annum)	Total Payment Due
	Ten (10) calendar days after entry of Consent Judgment	\$3,500.00	0	\$3,500.00
	Forty (40) calendar days after entry of Consent Judgment	\$4,240.00	0	\$4,240.00
1	July 5, 2012	\$1,000.00	\$90.79	\$1,090.79
2	August 5, 2012	\$1,000.00	\$31.88	\$1,031.88
3	September 5, 2012	\$1,000.00	\$31.03	\$1,031.03
4	October 5, 2012	\$1,000.00	\$29.20	\$1,029.20
5	November 5, 2012	\$1,000.00	\$29.33	\$1,029.33
6	December 5, 2012	\$1,000.00	\$27.56	\$1,027.56
7	January 5, 2013	\$1,000.00	\$27.63	\$1,027.63
8	February 5, 2013	\$1,000.00	\$26.78	\$1,026.78
9	March 5, 2013	\$1,000.00	\$23.42	\$1,023.42
10	April 5, 2013	\$1,000.00	\$25.08	\$1,025.08
11	May 5, 2013	\$1,000.00	\$23.45	\$1,023.45
12	June 5, 2013	\$1,000.00	\$23.38	\$1,023.38
13	July 5, 2013	\$1,000.00	\$23.26	\$1,023.26
14	August 5, 2013	\$1,000.00	\$20.29	\$1,020.29
15	September 5, 2013	\$1,000.00	\$20.84	\$1,020.84
16	October 5, 2013	\$1,000.00	\$19.34	\$1,019.34
17	November 5, 2013	\$1,000.00	\$19.14	\$1,019.14
18	December 5, 2013	\$1,000.00	\$17.70	\$1,017.70
19	January 5, 2014	\$129,060.00	\$1,905.52	\$130,965.52
	TOTALS	\$154,800.00	\$2,415.62	\$157,215.62

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EXHIBIT B

Employee	Gross Back Wages Due	PJ Interest (1% annum)	Total Due
Lolita Bradford	\$881.00	\$13.75	\$894.75
Priscilla Bostwick	\$46,272.00	\$722.06	\$46,994.06
Lolita Criste	\$30,674.00	\$478.66	\$31,152.66
Esmerelda Cuardo	\$8,348.00	\$130.27	\$8,478.27
Antonio Flora	\$7,801.00	\$121.73	\$7,922.73
Jamie Hipolito	\$4,455.00	\$69.52	\$4,524.52
Maura Hipolito	\$16,109.00	\$251.38	\$16,360.38
Adelina Lastimosa	\$8,552.00	\$133.45	\$8,685.45
Leonardo Lastimosa	\$8,552.00	\$133.45	\$8,685.45
Grail McCoy	\$79.00	\$1.23	\$80.23
Cynthia Terrado	\$7,105.00	\$110.87	\$7,215.87
Eduardo Terrado	\$7,105.00	\$110.87	\$7,215.87
Maribel Wilson	\$8,867.00	\$138.37	\$9,005.37
TOTALS	\$154,800.00	\$2,415.61	\$157,215.61

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